



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 28, 2009

Ms. Leigh Tomlin  
Public Information Officer  
Texas Forensic Science Commission  
P. O. Box 2296  
Huntsville, Texas 77341-2296

OR2009-18224

Dear Ms. Tomlin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 365668.

The Texas Forensic Science Commission (the "commission") received a request for (1) all contracts pertaining to a named individual, including amendments and supplements, and documents that reflect the amount of money paid to this individual; (2) any draft reports prepared by this named individual; (3) all e-mails or other communications by and between the named individual and others regarding his report; (4) all communications between the commission and anyone else regarding the named individual; and (5) copies of all materials provided to the commission by the named individual. You state that you will release some of the requested information. You claim that portions of the submitted information are excepted from disclosure under section 552.107 of the Government Code.<sup>1</sup> In addition, you assert that release of some of the requested information may implicate the privacy interests of third parties. Accordingly, you state that the commission notified these third parties of this request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code §§ 552.305 (permitting interested third party whose privacy or property interests may be at issue to submit to

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<sup>1</sup>Although you assert that the requestor withdrew his request for the information in Exhibit 1, we note that the requestor withdrew his request contingent the commission providing him certain information regarding the emails contained in Exhibit 1. As you inform us that you have not provided the requestor with the information concerning these emails, we conclude that he has not withdrawn his request for Exhibit 1 and we address your arguments under section 552.107 for the information contained in Exhibit 1.

attorney general reasons why requested information should not be released), .304 (providing that an interested third party may submit comments stating why information should or should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why the requested information should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the third parties have submitted comments to this office explaining why any portion of the submitted information should not be released to the requestor. Accordingly, the commission may not withhold any portion of the submitted information based on the interests of the third parties.

We note the requestor excluded from his request medical records, insurance documents, criminal history information for a specified individual, driver's license numbers, social security numbers, and certain case specific documents. Thus, any such information within the submitted documents is not responsive to the present request for information, and the commission need not release this information to the requestor in response to his request.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no

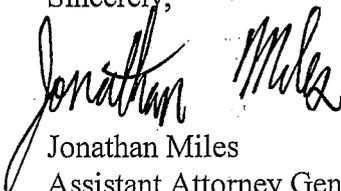
pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. See *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You claim that the e-mails in Exhibit 1 were communicated for the purpose of facilitating the rendition of professional legal services. You state that the communications were intended to be confidential, and you do not indicate that their confidentiality has been waived. You have identified the parties to the communications. Upon review, we find that the commission may withhold Exhibit 1 under section 552.107 of the Government Code. As no further arguments against disclosure have been raised, the remaining responsive information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/eeg

Ref: ID# 365668

Enc. Submitted documents

c: Requestor  
(w/o enclosures)